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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 96-6
To Permit Flexible Service Offerings	)	
in the Commercial Mobile Radio Services	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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The Personal Communications Industry Association ("PCIA"), by its attorneys, respectfully submits its reply comments in the above-captioned proceeding concerning the ability of commercial mobile radio service ("CMRS") providers to offer expanded service options.[1] As detailed below, the opening comments reflect a consensus favoring adoption of rule changes to permit all broadband and narrowband CMRS licensees to provide all technically feasible fixed services. By allowing CMRS licensees the unfettered opportunity to respond to marketplace demands by choosing which services to provide, the FCC will promote efficient spectrum usage and encourage technological innovation. In addition, the record before the Commission shows that providers of fixed wireless services should remain regulated as CMRS carriers. Finally, there is widespread concurrence that the Commission should adopt universal service mechanisms that assure a level playing field for wireless carriers. The adoption of rules consistent with these principles would best advance the

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[1] FCC 96-17 (Jan. 25, 1996) ("*Notice*"). PCIA filed opening comments in this docket on March 1, 1996. The date for filing reply comments was extended to March 25, 1996. *Order*, DA 96-225 (Feb. 22, 1996).

agency's stated policy goals of competition in the telecommunications marketplace and regulatory simplicity.

I. SUMMARY

The opening comments in this proceeding overwhelmingly support the Commission's proposals to grant greater flexibility to CMRS licensees to provide fixed services to the public. This enhanced service flexibility, available to all CMRS licensees to offer any type of fixed service, will benefit the public, promote the competitive marketplace, and enhance administrative simplicity.

The Commission should not prescribe limits on the level of fixed service to be provided over CMRS systems. Instead, this allocation decision should be left to the marketplace.

Fixed CMRS offerings should be regulated consistent with the regulatory structure applied to mobile services. Under existing legal standards, recently affirmed in the Telecommunications Act of 1996, the FCC has full authority to direct the nature of applicable regulation.

Finally, CMRS licensees should be able to obtain universal service funding on a non-discriminatory basis, consistent with applicable federal standards.

II. THE COMMENTS PROVIDE STRONG SUPPORT FOR AFFORDING ALL CMRS PROVIDERS THE OPPORTUNITY TO OFFER ALL FIXED SERVICES

In its opening comments, PCIA supported the pro-competitive and deregulatory program outlined in the *Notice* and recommended that the Commission's proposals be expanded to permit *all* broadband and narrowband CMRS providers to offer *all* fixed services that they are technically capable of providing.[2] Many commenters agree that such action is consistent with the FCC's statutory mandate to subject all CMRS licensees to similar regulatory treatment.[3] Moreover, by extending operational flexibility to narrowband CMRS providers as well as to broadband CMRS licensees, the Commission will promote competition in both the wireless and local exchange marketplaces by making available to consumers a broader range of service offerings at competitive prices. As AirTouch Communications, Inc. and U S West NewVector Group, Inc. note:

> [N]arrowband PCS and paging licensees are now in a position to provide a broad range of fixed services for residences and businesses at low cost. For example, paging carriers can provide such services as fire and burglar alarm activations, heat and water regulation, and vending machine monitoring. Subjecting narrowband licensees to more stringent regulatory constraints than broadband CMRS providers would discourage the provision of these services, inhibit competition and increase regulatory disparity.[4]

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[2] *PCIA* at 4.

[3] *AirTouch Communications, Inc. and U S West NewVector Group, Inc.* ("*AirTouch*") at 6; *American Mobile Telecommunications Association, Inc.* at 5; *Frontier Corporation* at n.8; *NYNEX Companies* at 2; *Sprint Corporation* at 2; *SR Telecom, Inc.* at 13.

[4] *AirTouch* at 7.

It is clear that all CMRS service providers must have the capability, subject only to technical constraints, to tailor service arrangements to meet the needs of telecommunications users in order to compete as fully as possible in the marketplace. Thus, the Commission should not artificially handicap one class of CMRS providers as compared to others.

Furthermore, allowing all broadband and narrowband CMRS providers to offer a complete range of fixed services will advance the FCC's goal of administrative simplicity. PCIA submits that, by attempting to draw a distinction between wireless local loop and other wireless fixed services, the Commission not only would unduly restrict the ability of carriers to respond to consumer needs but would waste scarce agency resources in the process. Accordingly, the FCC should not "mire itself in defining the term 'wireless local loop' or in expending the considerable resources that would be needed to police compliance with such a restriction."[5] Instead, the Commission, at the outset, should grant all CMRS licensees, including narrowband CMRS providers, blanket authority to provide all fixed services.[6]

III. THE OPENING COMMENTS ILLUSTRATE THE IMPORTANCE OF RELYING ON THE MARKETPLACE TO DETERMINE HOW CMRS SPECTRUM IS USED

The majority of commenters join with PCIA in urging the Commission to let the marketplace decide whether CMRS spectrum will be used for mobile or fixed use, or a

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[5] *AT&T Corp.* ("*AT&T*") at 8.

[6] *See AMTA* at 5 ("[w]hile many fixed services may now require an amount of spectrum only available through broadband CMRS, narrowband services are also entitled to the same regulatory framework so that they may initiate appropriate services in the future without additional changes to the [Commission's] Rules").

combination thereof. As AT&T points out, "[u]nder a regime where the government is relying on market forces -- namely, auctions -- to distribute CMRS licenses, it makes sense to rely on the same market forces, to the extent possible, to determine how providers may make use of their authorizations."[7] Generally, bidders who win CMRS licenses at auction place the highest value on such authorizations and will provide service using the spectrum most efficiently.[8] Thus,

> [i]f consumers want two-way broadband wireless communications services, CMRS spectrum will be used to meet consumer demand. If the market demands a different use for CMRS spectrum, whether voice, data, broadband or narrowband, CMRS licensees will be motivated to meet that need. The Commission should not pre-judge the market and evolving CMRS technology by placing artificial restrictions on CMRS spectrum use, and thus should allow CMRS licensees to provide mobile, fixed and mixed services without restriction.[9]

By granting CMRS licensees the ability to keep pace with technological developments and to respond to evolving consumer demands for telecommunications services, the Commission will ensure the most efficient spectrum usage and provide CMRS licensees with the tools necessarily most effectively to meet the needs of the public.

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[7] *AT&T* at 5.

[8] *Id.* at 5.

[9] *Comcast* at 4.

IV. A PREPONDERANCE OF THE COMMENTING PARTIES AGREE THAT THE FIXED SERVICE OFFERINGS OF A CMRS LICENSEE SHOULD BE SUBJECT TO THE SAME REGULATORY SCHEME AS THE CMRS CARRIER'S MOBILE SERVICES

PCIA was among many parties supporting the Commission's proposal to treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider.[10] Thus, fixed wireless services offered by a CMRS provider would be subject to the same federal-state jurisdictional lines as any mobile services offered by such provider. Based on Section 332(c) of the Communications Act, the inseverability doctrine as espoused in *Louisiana Public Service Commission v. FCC*,[11] and the recently enacted Telecommunications Act of 1996, most parties agree that the FCC has the authority to treat fixed wireless services in the same manner as mobile wireless services.

A. Section 332 Gives the Commission Plenary Authority Over the Fixed Service Offerings of CMRS Carriers

With the enactment of Section 332(c), Congress deliberately chose a federal regulatory framework to apply to all CMRS offerings. Because CMRS services "by their nature,

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[10] *Ad Hoc Cellular Coalition* at 6-7; *AirTouch* at 10; *AMTA* at 4; *AT&T* at 9-10; *Cellular Telecommunications Industry Association* ("*CTIA*") at 7-8; *Celpage, Inc.* at 6-7; *Cole, Raywid & Braverman* at 7; *Frontier Corporation* at 3; *GO Communications* at 7; *PCIA* at 7-11; *Nextel Communications, Inc.* at 3; *Omnipoint Corporation* at 6-7; *SBC Communications, Inc.* at 5; *SMR Systems, Inc. and Digital Radio, L.P.* at 3; *Sprint Corporation* at 3; *Sprint Spectrum* at 4-5; *SR Telecom, Inc.* at 15; *360 Degree Communications* at 2; *UTC* at 3; *Western Wireless Corporation* at 4-6.

[11] 476 U.S. 355, 370 (1986) ("*Louisiana PSC*").

operate without regard to state lines . . . ,"[12] such services were specifically exempted from the dual federal and state regulatory regime originally established to govern interstate and intrastate services. Congress' intent was to create a seamless federal regulatory framework for CMRS providers. Thus, if CMRS carriers are subject "to multiple layers of regulation, based on the make-up of their service offerings at any given point in time,"[13] Congress' goal of achieving regulatory parity and uniformity in rate and entry regulation would be thwarted. Moreover, CMRS carriers' ability to add value to their mobile service offerings by marketing a menu of services, including fixed wireless loop service, would be severely restricted.

A handful of parties argue that wireless local loop services offered by a CMRS provider over its spectrum do not qualify as mobile services and, thus, are not exempt from state rate and entry regulation.[14] However, as AT&T notes, by defining "mobile service" as any service for which a license is required in a personal communications service established pursuant to the [PCS] proceeding . . . or any successor proceeding," Congress made clear that all PCS services, whether they are fixed or mobile in nature, are to be defined as CMRS and regulated under Section 332.[15] Consistent with the federal mandate

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[12] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 5205; *cf.* H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993) (Budget Act Conference Report).

[13] *AT&T* at 9.

[14] *National Association of Regulatory Utility Commissioners* ("*NARUC*") at 4-5; *New York State Department of Public Service* ("*NYSDPS*") at 1-3.

[15] *AT&T* at n.15, *citing* 47 U.S.C. § 153(n)(3).

In addition, several parties assert that all local loop services must be subject to comparable regulation, or else the Commission is promoting regulatory discrimination based on technology.[16] Congress, however, has directed in Section 332 that CMRS be subject to federal regulation as described above. Arguments about technology-based discrimination do not affect the congressional mandate. In addition, in other contexts and under other sections of the Communications Act, the FCC has concluded that different types of carriers providing similar services may warrant different levels of regulation.[17]

B. The Inseverability of Intrastate and Interstate CMRS Offerings Supports Federal Jurisdiction

While Section 332(c)(3)(A) of the Communications Act imposes no prohibition on state regulation of "other terms and conditions" of commercial mobile services, that jurisdiction remains subject to the "inseverability" doctrine. This doctrine, developed by the Supreme Court in *Louisiana PSC*, granted the FCC authority to preempt conflicting state

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[16] *Organization for the Promotion and Advancement of Small Telecommunications Companies* ("*OPASTCO*") at 2, 3-6, 9-10; *Pacific Telesis Group* at 2-3; *Worldcom, Inc.* at 7-10.

[17] Attempts somehow to equate fixed services provided over CMRS spectrum with Basic Exchange Telecommunications Radio Service ("BETRS") are unavailing. The New York State Department of Public Service tries to reason from prior Commission characterizations about BETRS that fixed CMRS cannot be a mobile service. *NYSDPS* at 2-3. The Alaska Telephone Association claims that "[t]he ability to offer wireless local loop is limited to Basic Exchange Telecommunications Radio Service (BETRS) technology." *Alaska Telephone Association* at 2. BETRS is provided in large part on specifically allocated frequencies and for specific purposes, which do not necessarily coincide with wireless local loop or other fixed services offered on CMRS systems. Attempts to draw analogies between BETRS and fixed CMRS simply have no basis.

rules where the Commission could not "separate the interstate and the intrastate components of [its] asserted regulations."[18] As PCIA detailed in its opening comments in this proceeding,[19] because "compliance with both federal and state law is in effect physically impossible" in this instance, federal law must prevail.[20]

C. State Regulation of CMRS Offerings Is Impermissible Under the Telecommunications Act of 1996

As UTC notes, the FCC's proposal to subject fixed services offered by CMRS carriers to the same regulatory scheme as their mobile service offerings is consistent with the competitive policies recently adopted in the Telecommunications Act of 1996.[21] New Section 253(a) of the Act states that "[n]o State or local statute or regulation, or other State or local legal requirements, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[22] As any state entry or rate regulation would violate Section 253(a) by effectively prohibiting the provision

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[18] *Louisiana PSC*, 476 U.S. at 376 n.4 (citing *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976); *North Carolina Utilities Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977)).

[19] *PCIA* at 8-11.

[20] *Louisiana PSC*, 476 U.S. at 368.

[21] *UTC* at 3.

[22] 47 U.S.C. § 253(a).

of fixed services by CMRS carriers, it would be subject to preemption pursuant to Section 253(d).[23]

Moreover, the Telecommunications Act of 1996 specifically preserved the preemption provisions of Section 332(c)[24] and excluded CMRS providers from the definition of "local exchange carrier."[25] Thus, the Telecommunications Act of 1996 reaffirms Congress' intent that federal regulation supersede state law with respect to CMRS, however defined.

V. THERE IS BROAD BASED AGREEMENT AMONG COMMENTING PARTIES CONCERNING THE ELIGIBILITY OF CMRS LICENSEES OFFERING FIXED SERVICES FOR UNIVERSAL SERVICE FUND SUBSIDIES

The comments reflect consensus regarding two central universal service issues. As an initial matter, most commenters agree with the Commission that all universal service issues should be addressed in a comprehensive fashion. In addition, a majority of the commenters believe that "all authorized telephone service providers, regardless of the transmission technology, [should] share the opportunity and obligations associated with all universal service programs."[26]

Under Section 102 of the Telecommunications Act of 1996, any carrier that agrees to assume universal service responsibilities and is designated as an eligible carrier for a service

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[23] 47 U.S.C. § 253(d). *See also Western Wireless* at 9.

[24] 47 U.S.C. § 253(e).

[25] 47 U.S.C. § 3(44).

[26] *Fred Daniel d/b/a Orion Telecom* at 3.

area may receive universal service support on the same basis as the incumbent local exchange carrier.[27] Commenters point out that, "[t]he Act purposefully does not distinguish the technology by which telecommunications carriers provide the specific service offerings to be defined as 'universal service.'"[28] More importantly, "[t]he 1996 Act is entirely consistent with the Commission's determination, announced in the pending universal service proceeding, that high-cost supports should be technology-neutral . . . ."[29] Accordingly, CMRS licensees that provide fixed services should be eligible to participate in the universal service program on the same basis as other providers of telecommunications services.[30]

PCIA further urges the Commission to allow members of the wireless industry to be represented on the newly constituted Joint Board and to continue to reduce the barriers to entry in the local exchange market by potentially designating more than one carrier as an "essential carrier." These proposals "will stimulate competition in high-cost areas where incumbent providers do not necessarily have the incentive to develop new technologies or otherwise improve efficiency."[31]

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[27] 47 U.S.C. § 102.

[28] *Rural Cellular Association* at 4-5.

[29] *Sprint Spectrum* at 6.

[30] Conversely, as PCIA noted in its opening comments, it may be inappropriate to place the same type of universal service obligations on those CMRS providers, such as narrowband carriers, that do not provide services that compete with the local loop offerings of local exchange carriers. *PCIA* at 12 n.33.

[31] *Id.* at 7.

VI. CONCLUSION

As detailed herein, the comments reflect consensus that all CMRS licensees should be granted increased flexibility to provide fixed wireless services without being subject to state rate and entry regulation. Complete flexibility in service provision will result in efficient spectrum utilization and reduced regulatory burdens. Most importantly, the Commission's policies will ensure robust and innovative wireless and local exchange markets.

Respectfully submitted,

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